LEGAL CONSIDERATIONS FOR HANDLING ALCOHOL-RELATED INCIDENTS

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ALCOHOL-RELATED INCIDENT

- Any incident in which the use of alcohol was a contributing factor (MARADMIN 316/01)
  - Driving Under the Influence (Art. 111, UCMJ)
  - Drunk on Duty (Art. 112, UCMJ)
  - Art. 134, UCMJ Offenses
    - Drunk and Disorderly Conduct
    - Incapacitation for Performance of Duties due to Intoxication

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ALCOHOL-RELATED INCIDENT

- Other offenses in which the use of alcohol is commonly a contributing factor:
  - Assault (Art. 128, UCMJ)
  - Rape or Sexual Assault (Art. 120, UCMJ)
  - Wrongful Use of a Controlled Substance (Art. 112a, UCMJ)
  - Conduct Unbecoming an Officer (Art. 133, UCMJ)
  - Communicating a Threat (Art. 134, UCMJ)

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COMMANDER'S LEGAL OPTIONS

- No Action
- Non-punitive Measures
  - Non-punitive Letter of Caution
  - Administrative Counseling
- Administrative Action
  - Non-judicial Punishment
  - Involuntary Administrative Separation
- Court-Martial Action
  - Summary Court-Martial
  - Special Court-Martial
  - General Court-Martial

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NON-PUNITIVE MEASURES

- Types
  - Non-punitive Letter of Caution (Sec. 0105 JAGMAN)
    - Does not become a part of OMPF.
  - Administrative Counseling (Sec. 6105 MARCORSEPMAN)
    - Purpose is for rehabilitation and counseling.
    - Recorded in Service Record Book

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ADMINISTRATIVE ACTION

- Non-judicial Punishment (Part. V, MCM)
  - Standard of Proof is “Preponderance of the Evidence.”
  - A Marine must be given an opportunity to refuse NJP, except if embarked on a vessel.
  - Maximum punishment determined by rank of accused and rank of officer imposing NJP.
    - Maximum on officers: Arrest in quarters for 30 days; 60 days restriction; and forfeiture of one-half pay per month for two months.
    - Maximum on enlisted: 60 days restriction, forfeiture of one-half pay per month for two months; and reduction of one enlisted rank.

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ADMINISTRATIVE ACTION

- Involuntary Administrative Separation
  - Primary References
    - Officers: SECNAVINST 1920.6C
    - Enlisted: MARCORSEPMAN (MCO P1900.16F)
  - Typical Bases for Alcohol Related Incidents
    - Alcohol Rehabilitation Failure (Hon or Gen characterization of service)
    - Misconduct (Hon, Gen or OTH characterization of service)
      - Pattern of Misconduct
      - Commission of a Serious Offense
      - Civilian Conviction

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ADMINISTRATIVE ACTION

- Involuntary Administrative Separation
  - Rights of a Respondent
    - If an OTH is sought, then the respondent has a right to an administrative separation board.
      - If the respondent requests a board, then he/she has the right to be represented by a judge advocate.

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ADMINISTRATIVE ACTION

- **Involuntary Administrative Separation**
  - The first GCMCA is the separation authority for enlisted Marines, unless:
    - Marine > 18 years service (DC, M&RA is the separation authority)
    - Sole basis for separation was also a charge at a SPCM or GCM, where the court did not adjudge a punitive discharge, and the command seeks an OTH (DC, M&RA is the separation authority)
      - First GCMCA if command only seeks an HON or GEN
    - Board substantiated the misconduct, but recommended retention and the command still seeks separation (ASN, M&RA is the separation authority)
      - Only Hon or Gen characterization of service authorized.
    - Board did not substantiate the misconduct and the command still seeks separation (ASN, M&RA is the separation authority)
      - Only Hon or Gen characterization of service authorized.
      - Command must demonstrate that the findings of the board were "clearly contrary to the substantial weight of the evidence in the record."

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ADMINISTRATIVE ACTION

- **Involuntary Separation**
  - Officers
    - ASN, M&RA is the separation authority for Officers.
    - Probationary Officers
      - Less than 6 years of commissioned service.
      - Can be separated via notification procedures
        - » Only Hon or Gen characterization of service authorized.
      - Can receive an OTH if permitted a BOI or BOI waived.
    - Non-Probationary Officers
      - 6 or more years of commissioned service.
      - Board of Inquiry (BOI) required unless waived.
      - Can receive an Hon, Gen or OTH characterization of service depending on the recommendation of the BOI or if BOI waived.

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COURT-MARTIAL ACTION

- **Summary Court-Martial**
  - **Composed of one commissioned officer**
  - **Burden of Proof is "beyond a reasonable doubt."**
  - **Not authorized for Officers**
  - **Maximum Punishment**
    - If E-4 or below: 30 days confinement; forfeiture of two-thirds pay for one month; and reduction to lowest pay grade
    - If E-5 or above: Restriction for 60 days; forfeiture of two-thirds pay for one month; and reduction one pay grade.
  - Result reviewed by a judge advocate for legal sufficiency

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COURT-MARTIAL ACTION

- **Special Court-Martial**
  - **Composed of a military judge and/or military members**
  - **Burden of Proof is “beyond a reasonable doubt.”**
  - **Accused represented by a defense counsel**
  - **Maximum Punishment:**
    - 12 months confinement
    - Forfeiture of two-thirds pay per month for 12 months
    - Reduction to lowest pay grade
    - Bad Conduct Discharge

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COURT-MARTIAL ACTION

- **General Court-Martial**
  - **Composed of a military judge and/or military members**
  - **Burden of Proof is “beyond a reasonable doubt.”**
  - **Art. 32 Hearing (unless waived by the accused) required prior to Referral**
  - **Accused represented by a defense counsel**
  - **Maximum Punishment:**

    Maximum allowable for the Offense by the UCMJ

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EXERCISING JURISDICTION

- Cases Tried in State or Foreign Courts: JAGMAN Sec. 0124
  - Commanders may dispose of an offense in any manner desired prior to civilian or foreign adjudication (NJP or court-martial).
  - After civilian or foreign adjudication, if charges are not already referred to court-martial - must get permission of a GCMCA to proceed to NJP or court-martial for the same offense.
  - Criteria for GCMCA to use in making decision:
    - Civilian proceedings concluded without conviction for any reason other than acquittal (Example – Judge dismisses charges); and/or
    - The interests of justice and discipline are considered to require further action under the UCMJ.

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PRETRIAL RESTRAINT

- Marines can *only* be assigned to liberty risk while deployed outside of U.S. or Territories, *otherwise* it is pretrial restriction that starts the *speedy trial clock* or *illegal punishment* in violation of Art. 13, UCMJ and Sec. 0104, JAGMAN

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QUESTIONS ?

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BACK UP SLIDES

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EXERCISING COURT-MARTIAL JURISDICTION

- Cases Tried in Foreign Court
  - Options limited by Status of Forces Agreement (SOFA), if one exists (JAGMAN Sec. 1008):
    - If there is a SOFA, Foreign Authorities have primary jurisdiction (right of first refusal), **except:**
      - **Offenses committed during official duty;**
      - **Offenses committed against the property or security of the Sending State;**
      - **Offenses solely against the person or property of another member of the force, civilian component or a dependent of the Sending State; or**
      - **Offenses not punishable by law of the Receiving State**.

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EXERCISING COURT-MARTIAL JURISDICTION

- **Cases Tried in Federal Court**
  - Constitutional Double Jeopardy prohibition applies for offenses tried at court-martial (5th Amendment, U.S. Constitution)
    - Federal Prosecution subsequent to NJP is not a Double Jeopardy violation.
      - NJP is administrative in nature.
      - The NJP would be a matter for consideration during sentencing by the judge.
    - A recent opinion by a Magistrate Judge in the Eastern District of Virginia indicated that a defense counsel must have notified the client of the possibility of prosecution for the same offense in Federal Court prior to acceptance of NJP.

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